

Filed for intro on 02/22/95  
Senate Bill \_\_\_\_\_  
By \_\_\_\_\_

House No. HB1474  
By Chumney

AN ACT to amend Tennessee Code Annotated, Title 63, Chapter 18, Part 1, relative to the licensure of massage therapists.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 63, is amended by deleting Chapter 18 in its entirety and by substituting instead Sections 2 through 13 of this act as new Chapter 18.

SECTION 2. This chapter shall be known and may be cited as the "Massage Registration Act of 1995".

SECTION 3. As used in this chapter, unless the context otherwise requires:

(1) "Board" means the massage registration board;

(2) "Compensation" means the payment, loan, advance, donation, contribution, deposit or gift of money or anything of value;

(3) "Massage" means the art of body massage, by hand or with a mechanical or vibratory device, for the purpose of massaging and may include the use of oil rubs, heat lamps, salt glows, hot and cold packs, tub, shower or cabinet baths. The procedures involved include, but are not limited to, touching, stroking, kneading, friction, vibration, percussion and medical gymnastics;

(4) "Massage establishment" means a place of business wherein the practice of massage is practiced; and

(5) "Massage therapist" means a person who practices massage for compensation.

SECTION 4. (a) There is hereby created the Tennessee massage registration board.

(b) The board shall be composed of five (5) members who are residents of the state. Except for a citizen member, each member shall have at least three (3) years experience in the practice of massage.

(c) All members shall be appointed by the governor. Initial appointments to the board shall be as follows:

(1) Two (2) members shall serve terms of one (1) year; and

(2) Three (3) members shall serve terms of two (2) years.

(d) Except for one (1) member who shall be a citizen member with no financial interest in massage, all board members shall be duly registered or eligible to be registered by the board. Subsequent appointees to the board shall have the professional qualifications required by their predecessors and shall be appointed to three-year terms.

(e) Members shall serve until their successors are appointed and qualified. Any vacancy on the board shall be filled by the governor for the balance of the unexpired term.

(f) For each day engaged in the business of the board, a member shall receive as compensation fifty dollars (\$50.00), and shall also receive actual expenses to be paid in accordance with the comprehensive travel regulations promulgated by the commissioner of finance and administration and approved by the attorney general and reporter.

(g) The members of the board shall elect annually a chair and a secretary/treasurer.

(h) The board shall meet as frequently as shall be reasonably necessary to implement the provisions of this chapter. Three (3) or more members of the board shall constitute a quorum for the purpose of transacting board business.

(i) For administrative purposes, the board shall be attached to the division of health related boards as defined in § 68-1-101, herein referred to as "division".

SECTION 5. (a) Persons or massage establishments engaged in massage for compensation shall register with the massage registration board.

(b) Any person who engages in massage for compensation without a current valid certificate of registration from the massage registration board commits a Class C misdemeanor.

SECTION 6. (a) The board shall establish procedures and criteria for the issuance of certificates of registration to persons and establishments engaged in massage for compensation.

(b) No person or establishment shall be issued a certificate of registration until the applicant and each person engaged in massage at such massage establishment has provided evidence satisfactory to the board that:

(1) The applicant is eighteen (18) years or older;

(2) The applicant has not been convicted of the offense of prostitution;

(3) The applicant has received the designation of "Nationally Certified in Therapeutic Massage and Bodywork" by the National Certification Board for Therapeutic Massage and Bodywork or an equivalent certification as designated by the board; provided, however, if the applicant has accrued, prior to the date of passage of this act, at least five hundred (500) hours of documented experience as a massage therapist, then the applicant may continue to practice as a massage therapist without having received such certification, but such applicant must document such experience to the satisfaction of the board within six (6) months of the effective date of this act; and

(4) All required fees have been paid.

SECTION 7. In order to effectuate the provisions of this chapter, the board or its authorized representative is empowered to conduct investigation of persons engaged in massage or massage establishments and to inspect the registration of practitioners and establishments for compliance. The refusal of a practitioner or establishment to permit

inspections shall be grounds for revocation, suspension or refusal to issue certificates of registration provided by this chapter.

SECTION 8. The board has the power and authority to enter into any court of this state having proper jurisdiction to seek an injunction against any person or massage establishment not in compliance with the provisions of this chapter, and is further empowered to enter into any such court to enforce the provisions of this chapter in order to ensure compliance with such provisions.

SECTION 9. The certificate of registration of a massage therapist may be revoked, suspended or annulled by the board for any of the following:

(1) The registrant is guilty of fraud in the practice of massage, or fraud or deceit in the registrant's admission to the practice of massage;

(2) The registrant has been convicted in a court of competent jurisdiction of an offense which constitutes a felony under the laws of this state;

(3) The registrant is engaged in the practice of massage under a false or assumed name, or is impersonating another practitioner of a like or different name;

(4) The registrant is addicted to the habitual use of intoxicating liquors, drugs or stimulants to such an extent as to incapacitate such person's performance of professional duties;

(5) The registrant is guilty of fraudulent, false, misleading or deceptive advertising, or for prescribing medicines or drugs, or practicing any licensed profession without legal authority;

(6) The registrant is guilty of willful negligence in the practice of massage, or has been guilty of employing, allowing or permitting any unregistered person to perform massage in such registrant's establishment;

(7) The registrant has violated any of the provisions of this chapter or any substantive rule promulgated under the authority of this chapter;

(8) The registrant has been convicted of prostitution, assignation or the solicitation or attempt thereof;

- (9) The registrant has engaged in the massage of the genitalia of another for hire; or
- (10) The registrant has engaged in the massage of a client without appropriately draping the client.

SECTION 10. (a) Charges relative to a violation of this chapter may be presented by any person, or the board may, on its own motion, direct the chair of the board to present charges. An accusation may be filed with the chair of the board, charging any registered massage therapist with any of the offenses enumerated in Section 9 of this act.

(b) The board shall provide applicants denied issuance of a certificate or practitioners whose certificate is revoked or not renewed, a hearing on such refusal, revocation or nonrenewal, which is consistent with due process of law. Upon a decision of the board to refuse to issue, revoke or not to renew a certificate, the practitioner or establishment shall be prohibited from engaging in massage until the board's decision is overturned.

SECTION 11. (a) The following persons are not required to register under this chapter:

- (1) Persons authorized by the laws of this state to practice any branch of medicine, surgery, osteopathy, chiropractic or chiropody, or persons holding a drugless practitioner's certificate;
- (2) Barbers duly licensed under the laws of this state;
- (3) Persons duly licensed by the state board of cosmetology; and
- (4) Registered occupational and physical therapists under the laws of this state.

(b) Any exemption granted under this chapter is effective only to the extent that the bona fide practice of the profession or business of the person exempted overlaps into the field comprehended by this chapter, and exemptions under this chapter are only for those activities which are performed in the course of the bona fide practice of the business or profession of the person exempted.

SECTION 12. The board is hereby authorized to promulgate, in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, such rules and regulations as are necessary to implement the provisions of this chapter.

(b) The board may adopt reasonable rules and regulations regarding personal cleanliness of massage therapists, and the sanitary condition of towels, linen, creams, lotions, oils and other materials, facilities and equipment used in the practice of massage.

(c) All fees for registration, renewal of registration, and all other related matters shall be set by the board.

SECTION 13. The board may, at its discretion, grant registration to any person who is licensed or registered in another state whose standards are as stringent as those required by the provisions of this chapter.

SECTION 14. Notwithstanding any provision of law to the contrary, the act of a duly registered massage therapist in performing a massage shall be deemed to be medically therapeutic in nature and shall not be subject to any form of state or local taxation or regulation not also imposed on other medically therapeutic activities.

SECTION 15. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 16. For the purpose of appointing members to the board and for promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes this act shall take effect January 1, 1996, the public welfare requiring it.